IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.12.2006

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

WRIT PETITION No.11493 of 2004
and
W.P.M.P.No.13522 of 2004

S.Mohamed Rabi ... Petitioner

Vs.

1. The Director of School Education
College Road, Chennai - 600 006.

2.The Chief Educational Officer,
Madurai.

3.The District Educational Officer,
Madurai, North Madurai at Melur.

4.The Correspondent,
Al Ameen Higher Secondary School,
Pudur Post, Madurai - 625 007 ... Respondents

The Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus as stated therein.

* * *

For petitioner : Mr.M. Hidayathullah Khan
For respondents : Mr.C.Thirumaran - G.A.for R1,R2 & R3
Mr.G.Sankaran - for R4

O R D E R

The Writ Petition has been filed praying for the issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent relating to the order issued in Mu.Mu.No.112091/W6/2001, dated 06.01.2004, and quash the same and consequently direct the respondents herein to grant approval for appointment to the post of P.G.Assistant (Physics) in which the petitioner is appointed with effect from 10.03.2000, with all the attendant benefits

2.Heard the learned counsel for the petitioner as well as for the respondents.

3.The brief facts of the case, as stated by the petitioner, are as follows:-

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

The petitioner has completed his degree in M.Sc.(Physics) and he has also passed B.Ed. Thus, he has qualified to be appointed to the post of P.G.Assistant (Physics) . He was appointed in the post of P.G.Assistant (Physics) in the fourth respondent school on 10.03.2000, in the vacancy which arose due to the voluntary retirement of the incumbent , who was occupying the said post. Hence, the petitioner came to be appointed in a regular sanctioned post.

4. It has been further stated that the fourth respondent school is an aided minority school. The Government of Tamil Nadu had permitted the fourth respondent school to start standards VI to VIII for the academic year 1963-1964, by G.O.Ms.No.1577, Education dated 04.07.1963. Thereafter, sanction was accorded for Higher Secondary Section by the proceedings of the Chief Educational Officer, Madurai, dated 07.08.1979. Further, as per the proceedings in Rc.No.24325/D2/80, dated 06.08.1980, the fourth respondent school was sanctioned with two posts of P.G.Assistant (Physics). On 19.12.1996, while fixing the staff strength of the fourth respondent school for the academic year 1996-97, the second respondent had stated that one post of P.G.Assistant (Physics) was surplus. However, both the P.G.Assistant teachers working in the fourth respondent school were continuously paid by the department without any break. It has been further submitted that since both the posts were sanctioned posts, on 03.11.1999, one M.Pandi working as P.G.Assistant (Physics) had voluntarily retired from service. In the said vacancy, the petitioner had been appointed with effect from 10.03.2000. Subsequent to the appointment of the petitioner, the fourth respondent school had forwarded the proposal to the third respondent for approval on 06.04.2000. However, the third respondent had returned the proposal on 17.04.2000, stating that the post is a surplus post.

5.It has been submitted that student teacher ratio for the year 1996-97 was taken into consideration for fixation of the teachers strength and one post of P.G.Assistant (Physics) was held to be surplus. However, in the subsequent years, the strength of the students had considerably increased. Further, the P.G.Assistant (Physics) which was declared as surplus, had not been surrendered or transferred to any other school and it continued to remain with the fourth respondent school. Hence, the fourth respondent management had made several representations to the second and third respondents for granting approval to the appointment of the petitioner. On 23.08.2001, a representation had been given to the first respondent for approval of the petitioner's appointment. On 24.12.2001, a further representation had been sent to the second respondent with the particulars of the increased strength in standards XI and XII. Based on the representations, the second respondent had called for a report from the third respondent as to whether the said post of P.G.Assistant (Physics) in the fourth respondent school remained surplus. After inspection of the fourth respondent school, the third respondent had submitted a report to the second respondent on 01.08.01 in Na.Ka.6681/Aa1/2001, dated 11.02.2002, showing the students strength as follows :-

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Date	Academic Year	Students Strength		Total
		11	12	
1/8/99	1999-2000	55	29	84
1/8/00	2000-2001	55	17	102
1/8/01	2001-2002	82	48	130

As per the report of the third respondent, it is evident that the strength of the students has been increasing every year and the work load of the teachers had also increased correspondingly. Hence, the second P.G.Assistant (Physics) post in which the petitioner was appointed cannot be declared as surplus. Therefore, it was further stated that the appointment should be approved by the concerned authorities. However, instead of approving the said appointment of the petitioner, the first respondent had passed the impugned proceedings, dated 06.01.2004, rejecting the proposal, sent by the school management, for appointment. The said impugned order has been passed without taking into consideration the facts and circumstances prevailing at the time of passing of the order.

6.In the counter affidavit filed on behalf of the third respondent, it has been stated that the fourth respondent school is a minority school which was upgraded as a Higher Secondary School in the year 1979. Based on the students strength prevailing at that time, two P.G.Assistant (Physics) posts were sanctioned as per proceedings R.C.No.24325/D.2/80, dated 06.08.1980, of the Director of School Education. In the academic year 1996-97, due to the fall in the students strength, one P.G.Assistant (Physics) became surplus. However, the teacher working in the surplus post was being paid the salary, till he had retired from service. Thereafter, the said post was declared to be surplus. As per the existing rules, the surplus vacant post cannot be filled up due to the lack of students strength in the fourth respondent school. However, the fourth respondent had appointed the petitioner without getting the approval of the authorities concerned. Therefore, the action taken by the third respondent is in order and as per the prevailing rules and regulations. The surplus post cannot be filled up even if there was non-surrender or transfer of said post. Therefore, according to G.O.Ms.No. 525, dated 29.12.1997, there was no need for the second P.G.Assistant (Physics) post in the fourth respondent school.

7.The learned Government Advocate appearing on behalf of the respondents had submitted a report stating that even as on date of the hearing of the present writ petition, there was no increase in the students strength to warrant a second P.G.Assistant (Physics) post. Infact, the strength of the students had gone down further.

8. The learned counsel appearing for the petitioner had contended that if the english medium sections were taken into consideration, the students strength would be sufficient for a second P.G.Assistant teacher post. However, the report of the Chief Educational Officer, Madurai, in

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Rc.No.5059/B1/2004, dated 16.11.2006, reads as follows:-

> " With reference to the above said subject, and on the reports of the 3rd and 4th cited, I would like to state that, the group started in the year 1978-79 (Maths, Physics, Chemistry and Biology) in Al-Ameen Higher Secondary School, K.Pudur, Madurai-7 for the Std. 11th and 12th (English Medium) was sanctioned on self finance basis without grant and the same group has been winded up subsequently from the year 2002-2003. Due to insufficient economic strength, the above said group has been winded up.
>
> Further, I am also to state that the group sanctioned in the year 2001-2002 (599-Physics, Chemistry, Maths and Computer Science - English Medium) to the above said school on the basis of self finance without grant and has also been closed in the year 2003-2004, due to insufficient strength of the group.
>
> Further, the Headmaster of the above said school, has also stated that, since 2003-04, there is no English medium section in Higher Secondary sections in the above said school, and the school is functioning without English Medium from 2003-04 till today.
>
> In the circumstances as stated above, and on the reports furnished in the reference cited, due to insufficient workload of Two P.G. (Physics) . One post of P.G. (Physics) has been rendered surplus with effect from 1996-97. Hence, the appointment of Writ Petitioner was not approved."

9.In such circumstances,it is clear that even the English Medium Sections have been closed and there is no reason for the fourth respondent school to request for a second P.G. Assistant teacher post. Further, it is seen that the District Educational Officer, Madurai, in Na.Ka.No.4751/Aa/2004, dated 16.11.2006, had stated that the english medium sections for the XI and XII standards in the fourth respondent school had started in the year 1978-1979 and they have stopped functioning in the year 2002-2003. Further, no government grant or aid had been given for the teachers teaching in the english medium sections. Similarly, a letter has been submitted by the Headmaster of the fourth respondent school addressed to the Chief Educational Officer,Madurai, stating that the english medium education in the fourth respondent school had been stopped from the year 2003-2004.

10. On a perusal of the records and based on the submissions made by the learned counsels appearing on behalf of the petitioner as well as respondents, it is clear that the petitioner had been appointed by the Management of the fourth respondent school and no prior approval had been

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

obtained for such appointment. Further, the said post in which the petitioner had been appointed had been held to be a surplus post by the proceedings of the first respondent, dated 06.01.2004. Further, it is seen that the Management of the fourth respondent school had not come before this Court to seek approval for the post of P.G.Assistant (Physics) in which the petitioner had been appointed on 10.03.2000. Further, it is found that at present, the students strength does not satisfy the requirements to have an additional post of P.G. teacher (Physics) in which the petitioner could be accommodated after due approval from the authorities concerned. Therefore, the claims of the petitioner as prayed for in the writ petition cannot be granted.

11.It is seen from the counter affidavit filed on behalf of the respondents that at the time of appointment of the petitioner, the students strength was below the required level. The students in the english medium cannot be taken into account because of the fact that it was not under the grant of aid. Later, the english medium sections have been closed and they are not functioning as on date. In such circumstances, the claims of the petitioner cannot be granted. However, the petitioner and the fourth respondent school may make necessary representations to the authorities concerned. It goes without saying that as and when such representations are made, the respondents would consider the same on merits and in accordance with law and pass appropriate orders, thereon.

With the above observations, the writ petition is dismissed. Consequently, the connected W.P.M.P is closed. No costs.

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar.

To

1. The Director of School Education
   College Road, Chennai - 600 006.
2. The Chief Educational Officer,
   Madurai.
3. The District Educational Officer,
   Madurai, North Madurai at Melur.
4. The Correspondent Al_Ameen Hr Sec School,
   Pudur Post, Madurai -7.

+ One cc to Mr. M.Hidayathullah Khan Advocate SR 6074
+ One cc to Govt Pleader SR 60661

MRD (co)
sg 6/2/07

WRIT PETITION No.11493 of 2004
and W.P.M.P.No.13522 of 2004
06.12.2006

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/